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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,398	02/20/2001	Claudia Conti	88265-412	2052

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

18

DATE MAILED: 12/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action SummaryApplication No.
09/785,398

Applicant(s)

Conti et al.

Examiner

Lien Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Sept. 30, 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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1. Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant amended the claims to include the limitation of "more than 40 seconds to about 100 seconds after baking". This limitation is not supported by the original disclosure. Page 5 discloses "more than 40 seconds, preferably more than 50 seconds and more preferably up to 70 seconds" and page 6 discloses "for over 100 seconds". There is no disclosure of "about 100 seconds".

2. The 112 first paragraph rejection of claims 1-8 is maintained for the same reason set forth in paragraph 2 of the previous office action.

3. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biggs et al in view of the book "The Wholefood Catalog", the cookbook "Cookies & Crackers" and Negro(Patent no. 4629628)

Biggs et al disclose a wafer comprising flour, sucrose, invert sugar, fat, salt and lecithin. The wafer contain a food core selected form the group consisting of ice cream, fish, meat, vegetable, fruit, nuts, chocolate pieces and the like. The wafer may be coated with a barrier coating such as a fat or fat based coating. (See column 2)

Biggs et al do not disclose the addition of cereal grits, the ratio of flour to grits, the amount of water in the wafer, the amount of ingredients as claimed, the flexibility at ambient

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temperature, the water activity of the second confectionery material and that the flour is wheat flour.

The Wholefood Catalog teaches to add cooked grits to batters for muffins, griddle cakes or quick breads for extra moisture and flavor.

The book "Cookies & Crackers" teaches wafers are flexible enough while they are still warm from the oven and such wafers can be bent into curved shapes. The book teaches that if the wafers harden before they are shaped, they can be returned to the oven and be warmed until they are pliable again.

Negro disclose formulations for wafer. The reference teaches that wheat flour is the most suitable for wafer and water is added to make the wafer batter. (See column 1)

While Biggs et al do not disclose the flour is wheat flour, it is obvious that wheat flour is used because it is well known in the art that whenever the term flour is used, it means wheat flour. However, even if Biggs et al do not intend for the flour to be wheat flour, it would have been obvious to one skilled in the art at the time of the invention to use wheat flour because it is well known that is the common flour used in making wafer and this is also shown by Negro. It would also have been obvious to add water to the Biggs et al composition to make a batter; It is well known that water or some other type of fluid is needed in order to make a batter. This is well known in the art and also taught by Negro. The amount of water used depends on the type of batter desired. If a thin batter is intended, it would have been obvious to use more water than a thick batter. One skilled in the art can determine the appropriate amount of water through routine

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experimentation taking into consideration of the type of batter and the texture desired from such batter. As to the flexibility, the claims have not cited anything unexpected. As shown by the cookbook, the wafers are flexible if they are still warmed. When the wafers are taken out of the oven, they are still warmed and therefore are flexible. This is expected of every wafers including the one disclosed by Biggs et al. Forty seconds are very short time after the wafers are taken out of the over; at this time, they are still warmed and thus are flexible. Biggs et al also disclose adding sugar additive such as invert sugar. The same sugar is added in the claimed composition to obtain flexibility; for this further reason, the Biggs et al product would have the same flexibility as claimed. It would have been obvious to one skilled in the art to add grits ,as taught by the cookbook, to the wafer batter if one desires to obtain extra moisture and flavor. The cookbook teaches to add grits to batter; since wafers are made from batter, they will also have the same benefit. The amount to use depends on the flavor and moistness desired and this can be determined by one skilled in the art. As to the issue of the grits being cooked or uncooked; this would have been an obvious matter of choice. As to the amount of ingredients, it would have been obvious to vary the amounts depending on the taste, flavor, texture desired. For example, it would have been obvious to add more sugar to obtain a sweeter taste. The water activity of the second confectionery material depends on the type of material used. It would have been obvious to select any type of confectionery material depending on the flavor desired. It would also have been obvious to select a material that is compatible with the wafer.

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4. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

December 15, 2002


LIEN TRAN
PRIMARY EXAMINER
